

FILED

NOT FOR PUBLICATION

JUL 12 2012

UNITED STATES COURT OF APPEALS

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

JASON M. JONES,

Plaintiff - Appellant,

v.

DOROTHY NASH HOLMES, Prosecutor;
et al.,

Defendants - Appellees.

No. 11-16556

D.C. No. 3:11-cv-00047-LRH-
RAM

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Larry R. Hicks, District Judge, Presiding

Submitted June 26, 2012**

Before: SCHROEDER, HAWKINS, and GOULD, Circuit Judges.

Nevada state prisoner Jason M. Jones appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging deliberate indifference to Jones's safety and health. We have jurisdiction under 28 U.S.C. § 1291. We

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

review de novo the district court's dismissal for failure to state a claim under 28 U.S.C. § 1915A. *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000). We vacate and remand.

The district court prematurely dismissed Jones's action as time-barred. It is not clear at this stage in proceedings whether the statute of limitations was tolled while Jones filed any administrative grievances. *See Brown v. Valoff*, 422 F.3d 926, 943 (9th Cir. 2005) ("the applicable statute of limitations must be tolled while a prisoner completes the mandatory exhaustion process"). Nor is it clear what date Jones filed this action. *See Douglas v. Noelle*, 567 F.3d 1103, 1104 (2009) (the mailbox rule of *Houston v. Lack*, 487 U.S. 266 (1988), applies to a pro se prisoner's § 1983 complaint).

VACATED and REMANDED.